

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**JILL DILLARD, JESSA SEEWALD,
JINGER VUOLO, and JOY DUGGAR**

PLAINTIFFS

vs.

CASE NO. 5:17-5089-TLB

**CITY OF SPRINGDALE, ARKANSAS;
WASHINGTON COUNTY, ARKANSAS;
KATHY O'KELLEY, in her individual and
official capacities;
ERNEST CATE, in his individual and official capacities;
RICK HOYT, in his individual and official capacities;
STEVE ZEGA, in his official capacity;
BAUER PUBLISHING COMPANY, L.P.;
BAUER MAGAZINE, L.P.;
BAUER MEDIA GROUP, INC.;
BAUER, INC.;
HEINRICH BAUER NORTH AMERICA, INC.;
BAUER MEDIA GROUP USA, LLC; and
DOES 1-10, inclusive**

DEFENDANTS

**RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED
COMPLAINT ON BEHALF OF SEPARATE DEFENDANTS CITY OF SPRINGDALE,
ERNEST CATE IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES, AND KATHY
O'KELLEY IN HER INDIVIDUAL AND OFFICIAL CAPACITIES**

Separate Defendants, Kathy O'Kelley, in her individual and official capacities; Ernest Cate, in his individual and official capacities; and City of Springdale, Arkansas (collectively referred to herein as the "Springdale Defendants"), by and through the undersigned attorneys, for their Response to Plaintiffs' Motion for Leave to File an Amended Complaint state the following:

1. On October 26, 2017, Plaintiffs filed a Motion for Leave to File an Amended Complaint and Incorporated Brief in Support (Doc. 74). Plaintiffs' [Proposed] Amended Complaint (Doc. 74-1) contains allegations and claims against the Springdale Defendants which

are identical to the allegations and claims alleged in Plaintiffs' original Complaint (Doc. 1).

2. The identical claims against Kathy O'Kelley and Earnest Cate, in their official capacities, and the City of Springdale, Arkansas were dismissed pursuant to this Court's Order on September 29, 2017 (Doc. 62).

3. The identical claims against Kathy O'Kelley and Earnest Cate, in their individual capacities, survived their Motion to Dismiss (Doc. 21) and were appealed, interlocutory, to the Eighth Circuit Court of Appeals on October 10, 2017 (Doc. 64).

4. Plaintiffs have filed their motion during the pendency of this Court's stay of all proceedings (Doc. 73). Plaintiffs did not respond to the Motion to Stay filed by Kathy O'Kelley and Ernest Cate, in their individual capacities (Doc. 65). Yet, after the stay was ordered, Plaintiffs have proposed an amended complaint which would restate their claims against the Springdale Defendants.

5. Because no new allegations have been raised against Kathy O'Kelley or Ernest Cate, in their official capacities, or the City of Springdale, the Motion for Leave to File an Amended Complaint should be denied as to those defendants.

6. Further, because the allegations against Kathy O'Kelley and Ernest Cate, in their individual capacities, are on interlocutory appeal at the Eighth Circuit, and all proceedings in this case have been stayed pursuant to Order of this Court dated October 25, 2017 (Doc. 73), the Motion for Leave to File an Amended Complaint should be denied as to those defendants.

7. Springdale Defendants are filing a Brief in Support contemporaneously with this Motion and it is adopted by reference pursuant to Federal Rule of Civil Procedure 10(c).

WHEREFORE the Springdale Defendants respectfully request that this Court deny Plaintiffs' Motion for Leave to File an Amended Complaint as to the Springdale Defendants, and for all other just and proper relief.

Respectfully Submitted,

/s/ Thomas N. Kieklak

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**COUNSEL FOR SPRINGDALE
DEFENDANTS**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 8th day of November, 2017, a true and correct copy of the above and foregoing Response to Motion for Leave on Behalf of Separate Defendants was filed with the Clerk via the CM/ECF system which will send notification of filing to the following:

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